HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 249 of 2006 (SS)

Amar Nath Singh s/o Sri Aan Singh, Lok Nirman Vibhag, Mechanic Store, Deopura Charuraha, Haridwar ..... Petitioner

Versus

1. State of Uttaranchal through Secretary, Public Works Department, Uttaranchal
2. Chief Engineer, Public works Department, Garhwal Region, Pauri Garhwal
3. Executive Engineer, Construction Division, PWD Haridwar
4. Assistant Executive Engineer, IV, Regional Division, P.W.D. Haridwar .....Respondents

Sri Pankaj Miglani, Advocate for the petitioner.
Standing Counsel for the respondents.

Dated : 1.3.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Pankaj Miglani counsel for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondents to regularise the service of the petitioner.

Briefly stated the petitioner was appointed Beldar in the respondent Department on 12.4.1990 and since then he has been working on daily wages.

The State of U.P. has issued a G.O. on 15.10.1997 in respect of reglarisation of the work charge employees of the department who are working continuously for the last several

years. According to G.O. work-charge employees who have rendered continuous satisfactory service of 5 years or more than 5 years till 31st March 1997 shall be regularised on the post held by them. The relevant clause of the G.O is mentioned below:

कार्य प्रभारित कर्मियों जिनकी निरन्तर संन्तोषजनक सेवायचें विभाग में दिनांक 31. 31.3.1997 को पॉच वर्ष या इससे अधिक हो गयी हों एवं अब तक निरन्तर कार्यरत हो तथा जो वर्कचार्ज पर नियुक्त कर प्रतिबन्ध हेतु जारी कार्मिक विभाग के शासनादेष सं0 1085/का–1991 दिनांकित 29.8.1991 के पूर्व से नियुक्त हो को उपलब्ध नियमित पदों /रिक्तियों स्थाई एवं अस्थाई दोनों प्रकृति के पद सम्मिलित हैं की सीमा तक नियमित कार्य प्रभारित अधिष्ठान में रखने हेतु पात्र माना जाय। इस नियमित कार्य प्रभारित कर्मचारियों को राज्य कर्मचारियों की भॅाति सभी सुविधायें अनुमन्य हों।

The petitioners have stated that he has completed more than 5 years of service up to 31st of March 1997 and he is liable to be regularised.

The petitioners have also relied upon the judgment of Apex Court in Writ Petition (Civil) No. 140 of 1989 Raj Narain vs. State of U.P. The Apex Court has observed as under:

"We have carefully perused the proposed scheme in regard to work charged employees and we felt that clause 'D' which talks of regularization as per vacancies arising in regular posts on the establishment, a modification in necessary, it that, there should be a review of the cadre strength from year to year and based on the past requirement

and continuity of work charges employees the cadre strength should be increased by a certain percentage of the work charged employees working over a period of time that may be fixed by the Government so that the pace of regularisation ia accelerated and in not the same as obtaining in the past, For example, if 100 work charged employees have been required throughout a period of time it could reasonably be estimated that even if shedding takes place a certain percentage of those employees would certainly be retained and a part of them could be absorbed by increasing the cadre strength to that extent. An exercise of review in the cadre strength from year to year, therefore, becomes necessary because while of the one side the financial difficulties of the State has to be kept in view, on the side the welfare of the workman who have served the State on different projects has to be balanced. Concern is also to be shown for thosel who have worked for a number of years and have become ineligible for any other employment anywhere, be that the private sector or the public sector. Therefore, a balance has to be struck between the two competing interests and that can be struck by a periodical revision of the cadre strength from year to year. We must also impression the State Government that if work charged employees have been on the establishment for long period that

State should be liberal in the matter of revision of the cadre strength so that the benefit of regularization is available to a reasonably good number of work charged employees who have been associated with State Department for long periods."

The petitioner has also placed reliance on the judgment of Prayag Narain and others vs. State of U.P. and others (1998) 3 UPLBEC 21251. In this case also the petitioners were employed in P.W.D. and were working on the post of Beldar/Meth. All of them were initially engaged on daily wages and later on engaged on master roll therefore, they had prayed that the respondents be directed to pay equal pay for equal work.

The petitioners have referred the judgment of Apex Court in the case State of Haryana and others vs. Piara Singh and others AIR 1992 SC 2130. It has been held as under:

"So far as the work charged employees and casual labour are concerned, the effort must be to regularize them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell-say two or three years- a presumption may arise that there is regular need for his services. In such situation it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so,

the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court security of tenure is necessary for an employee to give his best to the job"

The petitioner has stated that he has filed representation for his regularization in accordance with G.O. dated 15.10.1997 but the same has not been considered by the respondents.

In view of above, liberty is given to the petitioner to prefer a fresh representation to the appropriate authority, within one month after obtaining certified copy of this order, who shall decide the same in accordance with law taking into consideration the eligibility criteria if any, applicable with the petitioner, within two months thereafter.

Accordingly, writ petition is disposed of. No order as to costs.

Rajesh Tandon, J.

Dated: 1.3.2006
*Dhyani